



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB497]

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Naval Magazine Indian Island Ammunition Wharf Maintenance and Pile Replacement Project**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for letter of authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the United States Department of the Navy (Navy) for authorization to take marine mammals incidental to replacement and maintenance of the Ammunition Wharf marine structure at Naval Magazine (NAVMAG) Indian Island in Puget Sound, Washington, over the course of five years. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to *ITP.Pauline@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities) without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Availability**

Electronic copies of the Navy's application and separate monitoring plan may be obtained online at: [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities). In case of problems accessing these documents, please call the contact listed above.

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### **Summary of Request**

On May 14, 2021, NMFS received an application from the Navy requesting authorization for take of marine mammals incidental to construction related to replacement and maintenance activities at the Ammunition Wharf marine structure at NAVMAG Indian Island. NMFS sent initial questions regarding the application to the Navy on October 5, 2021. The Navy addressed the questions and submitted a revised Letter of Authorization (LOA) application on March 24, 2022. After additional questions were sent by NMFS the Navy submitted another revised application on June 12, 2022. The requested regulations would be valid for 5 years, from October 1, 2023 through

September 30, 2028. The Navy plans to conduct necessary work, including impact and vibratory pile driving, to replace and maintain the wharf structure. The proposed action may incidentally expose marine mammals occurring in the vicinity of in-water construction activities to elevated levels of underwater sound, thereby resulting in incidental take, by Level A and Level B harassment. Therefore, the Navy requests authorization to incidentally take marine mammals.

### **Specified Activities**

Maintaining the structural integrity of the Ammunition Wharf is vital to sustaining the Navy's mission and ensuring military readiness. The Navy proposes to replace up to 118 structural concrete piles or fender piles, conduct maintenance, and repair activities over a 7-year period on the Ammunition Wharf at NAVMAG Indian Island. Under the 5-year LOA, up to 110 structurally unsound structural piles or fender piles would be replaced. Structural concrete piles would be replaced with 24-in concrete piles or old fender piles would be replaced with 14-in steel H piles or 18.75-in composite piles. Up to eight steel piles may also be installed in addition to the structural concrete piles if necessary. To minimize underwater noise impacts on marine species, water jetting would be primary method to install concrete piles and vibratory pile driving would be the primary method to install steel piles. An impact hammer may be used if substrate conditions prevent the advancement of piles to the required depth or to verify the load-bearing capacity for both concrete and steel piles. An air bubble curtain or other noise attenuating device would be used to reduce noise levels during impact driving of 36-in steel piles but would not be used for concrete piles. All pile driving will be conducted during the prescribed in-water work window for the NAVMAG Indian Island facility (October 1 to January 15). Activity occurring during the 2 years following the 5 year LOA would consist only of removal and installation of concrete piles, and maintenance

and repair work, with no steel pile installation. Additional incidental take authorizations will be requested as needed for these activities.

**Information Solicited**

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: August 1, 2022.

**Kimberly Damon-Randall,**  
*Director, Office of Protected Resources,*  
*National Marine Fisheries Service.*

[FR Doc. 2022-16745 Filed: 8/3/2022 8:45 am; Publication Date: 8/4/2022]